

**DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS**

NOTICE OF PROPOSED RULEMAKING

The Chief Administrative Law Judge of the Office of Administrative Hearings, pursuant to the authority set forth in Section 8 of the Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code § 2-1831.05(b)(7)), gives notice of his intent to take final rulemaking action to adopt the following amendments to Chapter 28 to Title 1 DCMR in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register* in accordance with § 6(a) of the District of Columbia Administrative Procedures Act, D.C. Official Code § 2-505(a). These proposed rules would amend certain provisions of Office of Administrative Hearings Rules of Practice and Procedure.

Section 2800.5 of 1 DCMR Chapter 28 is added as follows:

2800.5 Many authorities may be applicable to administrative matters heard by this administrative court. Among these are the Constitution of the United States, statutes and regulations of the United States, and statutes and regulations of the District of Columbia. It is not practical to delineate in these Rules each of the many authorities that may possibly apply in some matters but not others. That these authorities are not specified in these Rules, however, does not change the fact of their applicability where the law so requires.

Section 2800.6 of 1 DCMR Chapter 28 is added as follows:

2800.6 These Rules may be cited individually in the form as "OAH Rule ____". When citing in this format, reference to the District of Columbia Municipal Regulations (DCMR) may be omitted.

Section 2807.4 of 1 DCMR Chapter 28 is amended to read as follows:

2807.4 It is solely the obligation of a party, an authorized representative, or an attorney whose address, telephone number(s), or fax number(s), if any, have changed, to promptly notify the Clerk and all other parties. Any change of address shall be filed with this administrative court and served upon all parties within three (3) business days of its occurrence. The information provided to this administrative court pursuant to this Rule shall be conclusively deemed to be correct and current.

Section 2809.7 of 1 DCMR Chapter 28 is amended to read as follows:

2809.7 If consented to in writing by a party, its counsel, or its authorized representative, and after that consent has been filed with the Clerk, service of a paper may be made upon the consenting party by electronic or other means. The consenting party may withdraw its consent to such service. Such withdrawal must be in writing and shall only be effective after it is served on all parties and filed with the Clerk.

Section 2814.5 of 1 DCMR Chapter 28 is amended to read as follows:

2814.5 If, after notice and an opportunity to respond, this administrative court determines that the provisions of Section 2814.4 have been violated, this administrative court may, pursuant to Section 12 of the Act and all other applicable authorities, impose an appropriate sanction upon any attorney, law firm or representative that is determined to be in violation.

Rule 2818 of 1 DCMR Chapter 28 is amended to read as follows:

- 2818.1 For failure of the petitioner to prosecute or to comply with these Rules or any order of this administrative court, a respondent may move for dismissal of an action or of any claim against the respondent, or the presiding Administrative Law Judge may order such dismissal on his or her own motion. Subject to the limitations of Section 2818.2, and unless otherwise specified, a dismissal under this Section, other than a dismissal for lack of jurisdiction, constitutes an adjudication on the merits.
- 2818.2 Any order of involuntary dismissal entered pursuant to Section 2818.1 or on the presiding Administrative Law Judge's own motion shall not take effect until fourteen (14) days after the date on which it is served, and shall be vacated upon the granting of a motion filed by petitioner within such fourteen (14) day period showing good cause why the case should not be dismissed.
- 2818.3 Unless otherwise required by statute, these Rules or an order of this administrative court, where counsel, an authorized representative, or an unrepresented party fails, without good cause, to appear at a hearing, or a pretrial, settlement or status conference, the presiding Administrative Law Judge may dismiss the case or enter an order of default in accordance with D.C. Superior Court Civil Rule 39-I. Any order of dismissal or default entered pursuant to this Section shall not take effect until fourteen (14) days after the date on which it is served, and shall be vacated upon the granting of a motion filed by the party within such fourteen (14) day period showing good cause why the case should not be dismissed or defaulted.

Section 2820.2 of 1 DCMR Chapter 28 is amended to read as follows:

- 2820.2 Subject to the limitations stated in Section 2820.1, in determining the admissibility of evidence, the Federal Rules of Evidence shall be deemed persuasive authority. In determining the weight to be given hearsay evidence, the presiding Administrative Law Judge may consider whether a recognized hearsay exception is applicable. To the extent it promotes fairness, equity and substantial justice for all parties, this Rule shall be construed to favor admissibility of relevant, non-cumulative evidence.

Section 2820.3 of 1 DCMR Chapter 28 is amended to read as follows:

- 2820.3 A party asserting an avoidance or other affirmative defense as identified in D.C. Superior Court Civil Rule 8(c) shall bear the burden of production and persuasion with regard to that defense. A party asserting an exception to the requirements or prohibitions of a statute or administrative rule shall bear the burden of production with regard to that exception.

Section 2820.4 of 1 DCMR Chapter 28 is added as follows:

- 2820.4 Subject to the requirements of Section 2820.3, the administrative court shall allocate burdens of production in a manner designed to promote fairness, equity, substantial justice, and sound judicial administration.

Section 2821.6 of 1 DCMR Chapter 28 is amended to read as follows:

- 2821.6 An interpreter appearing in a matter before this administrative court shall solemnly swear or affirm under penalty of perjury to interpret accurately, completely, and impartially. Language interpretation services during a proceeding will be provided upon the request of a party or where deemed necessary by the presiding Administrative Law Judge.

Rule 2823 of 1 DCMR Chapter 28 is amended to read as follows:

- 2823.1 In addition to the right to seek a subpoena under Rule 2822, in every case in which an evidentiary hearing has been ordered, each party shall disclose, by filing with this administrative court and serving upon each other party, the documentary exhibits it wishes to offer at the hearing or otherwise seeks to have considered by the presiding Administrative Law Judge. Unless otherwise ordered, such disclosure shall be made at least ten (10) calendar days before the date on which the evidentiary hearing is scheduled. This Section does not limit the right of any party to obtain information as permitted by other applicable law. This disclosure obligation contained in this Section shall not be deemed to be discovery for purposes of these Rules.
- 2823.2 No discovery shall be permitted unless authorized by order of the presiding Administrative Law Judge. Discovery shall be limited to Complex Track cases, and all requests for discovery shall be made upon motion.
- 2823.3 Unless otherwise provided for by applicable law or these Rules, the presiding Administrative Law Judge may permit any method of discovery available pursuant to the D.C. Superior Court Rules of Civil Procedure.
- 2823.4 If a motion to permit discovery pursuant to Section 2823.2 is granted, based on the discovery requested, the presiding Administrative Law Judge may order the submission of a joint discovery plan, the use of a specific method of discovery, or the service of a specific discovery request. The responding party shall have fourteen (14) days to respond to a specific discovery request, in a manner otherwise consistent with the provisions of the D.C. Superior Court Rules of Civil Procedure.
- 2823.5 The use of interrogatories is disfavored, and shall not be permitted unless otherwise ordered by this administrative court upon a showing by the proposing party that the information sought cannot reasonably and

efficiently be obtained by an alternative method. When authorized, the number of interrogatories ordinarily should not exceed ten (10) including subparts.

- 2823.6 Notwithstanding any other provision of these Rules, each deposition must be specifically authorized in advance by order of this administrative court.
- 2823.7 Unless otherwise ordered by this administrative court, all discovery shall be completed no later than thirty (30) days prior to the trial date. All discovery requests must be timely served sufficiently in advance so as to permit responses consistent with this Rule to be served on or before this deadline.
- 2823.8 Sanctions for failure of a party to comply with an order of this administrative court made pursuant to this Rule shall be as permitted by applicable law.

Section 2829.1 of 1 DCMR Chapter 28 is amended to read as follows:

- 2829.1 For cases arising under the Civil Infractions Act of 1985, as amended (D.C. Official Code Title 2, Chapter 18), upon application of a respondent adjudged liable for monetary sanctions, this administrative court may, in its discretion, permit installment payments, not to extend six (6) months beyond the date the order imposing the sanction becomes final, and imposing a statutory fee of one percent (1%) per month of the outstanding amount owed by a respondent for the installment service.

Section 2830.3 of 1 DCMR Chapter 28 is amended to read as follows:

- 2830.3 If a respondent files a timely request for a hearing to contest a claim for abatement costs made pursuant to Section 2830.1, the presiding Administrative Law Judge shall hold a hearing limited to the issue of the amount of the abatement costs. Such a hearing, and any *ex parte* proof hearing held pursuant to Sections 2830.4 and 2830.5, shall not litigate the liability of a respondent previously held liable for the violation for which the Government is claiming abatement costs.

Section 2831.4 of 1 DCMR Chapter 28 is amended to read as follows:

- 2831.4 Unless otherwise required by applicable law, any motion for a new trial shall be filed within ten (10) days of service of the final order.

Section 2831.6 of 1 DCMR Chapter 28 is amended to read as follows:

- 2831.6 Unless otherwise required by applicable law, no later than ten (10) days after service of the final order, this administrative court, on its own, may order a new trial for any reason that would justify granting one on a party's motion. After giving the parties notice and an opportunity to be heard,

this administrative court may grant a timely motion for a new trial for a reason not stated in the motion.

Section 2832.4 of 1 DCMR Chapter 28 is amended to read as follows:

2832.4 Unless otherwise required by applicable law, any motion for reconsideration of a final order shall be filed within ten (10) days of service of that order. Any motion for reconsideration of an interlocutory order shall be filed within ten (10) days of service of that order, or within such other time period as the presiding Administrative Law Judge permits.

Section 2833.2 of 1 DCMR Chapter 28 is amended to read as follows:

2833.2 On motion and upon such terms as are just, this administrative court may relieve a party or a party's legal representative from a final order for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 2831; (3) fraud, misrepresentation, or other misconduct of an adverse party; (4) the final order is void; (5) a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the final order. Relief under this Section may be granted only to the extent it could be granted under the standards of D.C. Superior Court Civil Rule 60.

Section 2835.2 of 1 DCMR Chapter 28 is amended to read as follows:

2835.2 In determining whether to grant a stay, this administrative court shall assess whether the movant is likely to succeed on the merits, whether denial of the stay will cause irreparable injury, whether and to what degree granting the stay will harm other parties, and whether the public interest favors granting a stay.

Section 2837.2 of 1 DCMR Chapter 28 is amended to read as follows:

2837.2 Administrative Law Judges shall at all times be in compliance with the requirements of the OAH Code of Judicial Ethics, a copy of which shall be maintained and be available for inspection and copying at the Clerk's office during business hours.

Section 2838.4 of 1 DCMR Chapter 28 is amended to read as follows:

2838.4 Current law students active in *pro bono* legal clinics may appear before this administrative court with the consent and oversight of the supervising attorney assigned to them and in a manner consistent with District of Columbia Court of Appeals Rule 48, and under any limitations ordered by the presiding Administrative Law Judge. A law student authorized to

appear under this Section may only appear before this administrative court in the presence of a supervising lawyer as defined in D.C. Court of Appeals Rule 48(e). A law student practicing under this Section shall not file any paper with this administrative court unless it is signed by the law student and the supervising lawyer.

Section 2839.2 of 1 DCMR Chapter 28 is amended to read as follows:

- 2839.2 The administrative court shall endeavor in all its proceedings to safeguard the public from the unauthorized practice of law in violation of D.C. Court of Appeals Rule 49. An Administrative Law Judge may permit a party to be represented by another person who is not an attorney, without charge or fee, where required by law. An Administrative Law Judge may permit a party to be represented by an individual, or by a representative of any entity listed in Section 2839.4, if the party had a contractual relationship substantially related to the subject matter of the case that existed prior to the case arising (such as a landlord/tenant or owner/property manager relationship).

Section 2839.5 of 1 DCMR Chapter 28 is amended to read as follows:

- 2839.5 Pursuant to applicable law, including Sections 12 and 17 of the Act, and in the exercise of this administrative court's inherent authority to protect the integrity of its proceedings and regulate the practice of individuals who appear before it, *see, e.g., Brown v. District of Columbia Board of Zoning Adjustment*, 413 A.2d 1276, 1282-83 (D.C. 1980), the Chief Administrative Law Judge or an Administrative Law Judge may regulate and restrict the right of any individual to appear before this administrative court.

Section 2839.6 of 1 DCMR Chapter 28 is amended to read as follows:

- 2839.6 The Chief Administrative Law Judge or a presiding Administrative Law Judge may enter an order restricting the right of an individual to appear before this administrative court in the event of a violation of these Rules or for other good cause. If imposing a disqualification or suspension, the individual shall be given notice and opportunity to be heard either before the imposition of the suspension or disqualification, or as soon thereafter as is practicable.

Rule 2840 of 1 DCMR Chapter 28 is amended to read as follows:

- 2840.1 Unless a federal law or regulation or District of Columbia statute requires that a particular federal or District of Columbia procedure be observed, these Rules and any final or interlocutory order of this administrative court shall take precedence and supersede in the event of a conflict with other authority on any issue involving or relating to procedures of this administrative court. In determining whether an issue involves or relates

to procedures of this administrative court, the presiding Administrative Law Judge shall follow the doctrine set forth in *Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938), and related case law.

- 2840.2 Where a decision of an Administrative Law Judge is in conflict with a decision of a least one other Administrative Law Judge on the same issue, or where litigants before this administrative court would likely benefit from a clear precedent on a particular legal issue, the Chief Administrative Law Judge may, upon motion by a party in a pending adjudicative case, or upon his or her own motion, assign three Administrative Law Judges who have not participated in either the pending adjudicative case or the conflicting decisions, to sit on a panel and decide all or part of the pending case. In determining whether to convene a panel under this Section, the Chief Administrative Law Judge may consider, among other things, whether the panel is likely to provide clarity and guidance in an important legal issue before this administrative court. Except as otherwise ordered, a motion brought under this Section shall be deemed denied unless granted within ten (10) days of its filing. The denial of a request for a panel under this Section shall be deemed an interlocutory order. A motion under this Section may not be filed within thirty (30) days prior to a trial date, except by leave of the presiding Administrative Law Judge. Unless ordered granted by the Chief Administrative Law Judge, the mere filing of a motion under this Section shall have no effect on a pending case.
- 2840.3 This administrative court may, on its own motion, obtain information relevant to a pending matter from a disinterested person by inviting and receiving an *amicus curiae* submission. All parties to the matter shall be given a reasonable opportunity to respond to any *amicus* submission. A presiding Administrative Law Judge may also grant a motion to file a submission *amicus curiae*; however, no such submission shall be filed without advance leave of the presiding Administrative Law Judge. A motion for leave to file a submission *amicus curiae* shall not exceed five pages and shall state which parties to the litigation, if any, consent to its filing. Such a motion shall also state why the filing of the contemplated *amicus curiae* submission is likely to contain relevant matter not already brought to the attention of the administrative court by the parties. Any *amicus curiae* submission filed without advance leave shall be rejected for filing by the Clerk, or be stricken by order of the presiding Administrative Law Judge.
- 2840.4 All papers to be filed in proceedings before this administrative court shall be filed in the Clerk's office. Unless otherwise provided by these Rules or ordered by the Chief Administrative Law Judge, no papers may be filed in the Clerk's office when this administrative court is closed, or before 9:00 AM or after 5:00 P.M. on days when this administrative court is open.

- 2840.5 Papers to be filed in an appellate proceeding or other proceeding before this administrative court may be subject to a filing fee in accordance with a fee schedule issued in accordance with Section 2840.6.
- 2840.6 By authority of the Chief Administrative Law Judge, the Clerk may create and, as necessary modify, a schedule of filing, copying and related fees consistent with applicable law, except that in non-appellate cases in which the only remedy sought involves a sum certain, fees shall only apply in cases in which the sum certain can exceed \$500. Fees shall be limited or waived in accordance with an order of this administrative court pursuant to Section 8 of the Act or other applicable law. Where a fee applies, any submission filed without tender of the required fee may be rejected for filing by the Clerk or stricken by order of the presiding Administrative Law Judge. The schedule of filing, copying and related fees may be published in the D.C. Register when created and if modified.
- 2840.7 This administrative court shall be a weapons and illegal drug free area. Weapons, including, but not limited to, guns, knives, box cutters, chemical spray and pepper spray, are strictly prohibited and subject to confiscation. With regard to authorized service weapons, this Section does not apply to law enforcement officers employed by the District of Columbia or an agency of the United States either in uniform or with a prominently displayed badge and identification.
- 2840.8 No items that are potentially toxic, dangerous or otherwise present a threat to health or safety, such as sharp objects or refuse, shall be brought into the courtrooms of OAH, its common areas or offices, or offered as evidence in any proceeding before this administrative court unless identified to the Clerk's office at least ten (10) or more days prior to the proceeding so that sufficient safeguards may be put in place. A partial list of prohibited items shall be made available in the Clerk's office.
- 2840.9 An Administrative Law Judge, security personnel or administrative court staff may require the temporary removal of any individual who presents a threat to safety or is causing or contributing to a disruption of the administrative court's operations or proceedings.
- 2840.10 A monetary sanction pursuant to Section 12 of the Act or other authority shall not be imposed by an Administrative Law Judge unless it is in writing, is based on the observations of the Administrative Law Judge in a proceeding and is in the record, and the party subject to the sanction has had an opportunity to be heard on the matter. A fine or statutory penalty imposed in an enforcement case, including without limitation a Notice of Infraction or Notice of Violation, shall not be deemed a monetary sanction for purposes of this Section. A non-monetary sanction may only be ordered by an Administrative Law Judge against a party for a default; a violation of these Rules, an order, or interlocutory order; or upon a finding

of bad faith conduct within the context of a litigation. Such an order shall be consistent with the Due Process Clause, these Rules, and all other applicable law. Every order or interlocutory order issued by a presiding Administrative Law Judge shall be deemed to have incorporated this Section by reference.

- 2840.11 The use of cellular phones, pagers or other devices that emit noise and/or are capable of wireless transmission or reception shall not be permitted in courtrooms during a proceeding, except that such devices are permitted if they are set in a non-audible mode and are not used for transmission during a proceeding.
- 2840.12 Any organization, group, or individual may possess or use drawing or sketching equipment in a hearing room so long as the possession or use of such equipment does not interfere with the rights of the parties to a fair hearing, does not interfere with the fairness or conduct of a proceeding, and where such use is not precluded by statute, regulation, or order.
- 2840.13 Broadcasting, videotaping, photographing, or audio recording by any organization, group, or individual is not permitted in hearing rooms, witness rooms, waiting rooms, reception areas, or any other rooms or areas regularly utilized by OAH for administrative court operations.
- 2840.14 For purposes of this Rule, a hearing or proceeding is any matter in which an Administrative Law Judge or the Chief Administrative Law Judge presides.
- 2840.15 Nothing in this Rule shall be construed to limit the authority of the Chief Administrative Law Judge to authorize the recordation of a proceeding for training or evaluative purposes, to the extent that the Chief Administrative Law judge has determined that the use of such equipment does not interfere with the fairness or conduct of a proceeding, and where such use is not precluded by statute, regulation, or order.
- 2840.16 Except as otherwise required by the Chief Administrative Law Judge, any Administrative Law Judge may attend and observe any proceeding before the OAH to facilitate training, and for any other purposes consistent with the Act. Any Administrative Law Judge attending any proceeding pursuant to this Section shall manage any privileged or otherwise legally confidential information as required by applicable law and in the same manner that would be required if he or she was presiding at that proceeding.
- 2840.17 Non-judicial staff of the OAH may attend may attend and observe any proceeding before the OAH for training, and for any other purposes consistent with the Act, except as otherwise ordered by the presiding Administrative Law Judge. Any non-judicial staff member attending any

proceeding pursuant to this Section shall manage any privileged or otherwise legally confidential information as required by applicable law and in the same manner required if he or she was serving as a member of the Clerk's office at that proceeding.

2840.18 Unless otherwise prohibited by applicable law or by order of this administrative court, proceedings before this administrative court shall be open to the public.

2840.19 Unless otherwise provided in these Rules or prohibited by applicable law, the Chief Administrative Law Judge may, in his or her discretion, delegate the authority of his or her office to an Administrative Law Judge, and an Administrative Law Judge may delegate any ministerial or administrative authority of his or her office to the Clerk or his or her designees.

Section 2842.1 of 1 DCMR Chapter 28 is amended to read as follows:

2842.1 The Chief Administrative Law Judge shall review these Rules within thirty-six (36) months of their final promulgation, and, in his or her discretion, may issue revised rules for public comment and promulgation after the review.

The definition of "Order" in Rule 2899 of 1 DCMR Chapter 28 is amended to read as follows:

"Order" shall have the meaning provided that term in D.C. Official Code § 2-502(11) unless otherwise provided.

The definition of "Rule" or "Rules" in Rule 2899 of 1 DCMR Chapter 28 is amended to read as follows:

"Rule" or "Rules" means the rules of practice and procedure set forth in Chapters 28 and 29 of this Title, and shall refer to an entire section of a Chapter, as opposed to a subsection.

Comments on these proposed regulations should be submitted, in writing, to Mr. Tracy J. BeMent, Chief Administrative Officer, Office of Administrative Hearings, 825 North Capitol Street, N.E., Suite 4150, Washington, D.C. 20002, within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Copies of these proposed regulations are available without charge from the above address.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Housing and Community Development (Department), pursuant to the authority set forth in §5(d) of the Community Development Act of 1975 (December 16, 1975), D.C. Law 1-39 (D.C. Official Code §6-100(4)(c) and (d) (2001 ed.)) and Mayor's Order 76-111, 22 DCR 6367 (May 14, 1976), hereby gives notice of its intent to adopt the following amendments to Chapter 28 of Title 14 DCMR (Housing) in not less than thirty (30) days from the date of publication of this notice in the D.C. Register. Chapter 28 of Title 14 DCMR governs the administration and operation of the Single Family Residential Rehabilitation Program (Program). Specifically, the Director proposes to amend paragraphs 2800.1, 2801.1, 2801.4, 2801.5, 2801.6, 2801.8, 2801.9, 2803.1, 2803.1(a), 2803.1(d), 2803.2(a), 2805.1, 2805.4, 2805.5, 2807.1, 2807.2, 2807.3, 2807.4, 2807.5, 2809.1, 2809.3, 2809.4, 2809.5, 2809.6, 2811.1, 2811.2 and 2899.1; amend subsections 2801, 2807, 2809 and 2812; create a new paragraph 2801.5a; delete paragraphs 2801.2, 2801.12, 2801.13, 2803.1(c), 2805.6, 2807.6, 2807.7, 2809.1(a), 2809.1(b), 2809.2, 2811.1(a) and 2811.1(b); and delete subsections 2802, 2806, 2808 and 2810.

The purpose of this proposed rulemaking is to amend or delete certain sections of the regulation for the purposes of focusing the Program on core services to the District. The amendments and deletions will provide the Program with the authority only to offer direct amortizing and deferred rehabilitation loans, and grants for lead-based paint hazard abatement and accessibility-related modifications, to owner-occupants of 1-4 unit residential buildings who have incomes that meet the guidelines used for Community Development Block Grant, HOME Investment Partnership Program, and Housing Production Trust Fund eligibility. It will remove the authority for the Department to assist owner-investors, to refinance existing debt on assisted buildings, or provide assistance for non-housing code-related repairs.

Emergency rules were published at 50 DCR 48 (November 28, 2003), pages 10182-10184. The emergency rules expired on February 26, 2004.

Single Family Residential Rehabilitation Program

Chapter 28 (Single Family Residential Rehabilitation Program) of Title 14 DCMR is amended as follows:

Paragraph 2800.1 is amended by striking the phrase "by providing publicly assisted loans in conjunction with loans from local banks and savings and loan associations and, when appropriate, direct government rehabilitation loans".

Subsection 2801 is amended to read "ELIGIBILITY FOR LOANS AND GRANTS".

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Paragraph 2801.1 is amended (1) by substituting the phrase "Rehabilitation loans and grants" for the phrase "Leveraged direct rehabilitation loans" and (2) by substituting the phrase "the District of Columbia" for the phrase "Community Development (CD) Areas designated by the Mayor and Council".

Paragraph 2801.2 is deleted and replaced with the phrase "Deleted in its entirety."

Paragraph 2801.2(a) is deleted and replaced with the phrase "Deleted in its entirety."

Paragraph 2801.2(b) is deleted and replaced with the phrase "Deleted in its entirety."

Paragraph 2801.4 is amended by striking the phrases "and investor-owned," and "and multi-family".

Paragraph 2801.5 is amended to read "Each applicant for an amortized or deferred loan shall meet the following conditions:"

A new paragraph 2801.5a is inserted to read as follows:

"2801.5a Applicants shall be eligible to receive grants as follows:

"(a) For grants of up to \$10,000 to pay for modifications to a home to allow accessibility to mobility-impaired occupants, an applicant must provide physician's evidence of need on forms prescribed by the Department.

"(b) For grants to correct lead-based paint hazards, an applicant shall have lead-based paint hazards identified in the home by a certified lead-based paint risk assessor."

Paragraph 2801.6 is amended by substituting the phrase "loan or grant assistance" for the phrase "a rehabilitation loan".

Paragraph 2801.8 is amended by inserting the phrase "and/or grant" between the words "loan" and "documents".

Paragraph 2801.9 is amended by inserting the phrase "and/or grant" between the words "loan" and "prior".

Paragraph 2801.12 is deleted and replaced with the phrase "Deleted in its entirety."

Paragraph 2801.13 is deleted and replaced with the phrase "Deleted in its entirety."

Subsection 2802 is deleted and replaced with the phrase "Deleted in its entirety."

Paragraph 2803.1 is amended by striking the comma after the word "expenses" and the phrase "which shall constitute not less than eighty percent (80%) of the total amount financed by either a leveraged loan or a direct loan".

Paragraph 2803.1(a) is amended by inserting a comma after the word "conditions", and the phrase "lead-based paint hazards,".

Paragraph 2803.1(c) is deleted and replaced with the phrase "Deleted in its entirety."

Paragraph 2803.1(d) is amended by inserting a period after the phrase "during construction" and substituting the following for the remaining text:

"This amount shall not exceed two thousand dollars (\$2,000) during rehabilitation specifically for lead-based paint hazard abatement, plus two thousand dollars (\$2,000) during general rehabilitation, per household. Each amount shall be included in the amount of the loan or grant, as appropriate, provided to the household."

Paragraph 2803.2(a) is amended by striking the phrase "which exceed twenty percent (20%) of the rehabilitation construction costs".

Paragraph 2805.1 is amended by striking the words "leveraged and direct".

Paragraph 2805.4 is amended by deleting the phrase "'as-is' value of the property plus the estimated cost of rehabilitation" and inserting the phrase "'as-is' value of the property subject to completion of rehabilitation" in its place.

Paragraph 2805.5 is amended by striking the phrase "'as-is' value" and inserting the phrase "'as-is' value of the property subject to completion of rehabilitation" in its place.

Paragraph 2805.6 is deleted and replaced with the phrase "Deleted in its entirety."

Subsection 2806 is deleted and replaced with the phrase "Deleted in its entirety."

Subsection 2807 is amended to read "LOAN CRITERIA"

Paragraph 2807.1 is amended by striking the phrase "of § 2801.12 or § 2801.13" and substituting the phrase "established by the U.S. Department of Housing and Urban Development for the HOME Investment Partnerships Program for the Washington, D.C. Metropolitan Statistical Area" in its place.

Paragraph 2807.2 is amended by striking the phrase "For a direct loan,".

Paragraph 2807.3 is amended by striking the phrase "For a direct loan,".

Paragraph 2807.4 is amended by striking the phrase "For a direct loan,".

Paragraph 2807.5 is amended by striking the phrase "without refinancing".

Paragraph 2807.6 is deleted and replaced with the phrase "Deleted in its entirety."

Paragraph 2807.7 is deleted and replaced with the phrase "Deleted in its entirety."

Subsection 2808 is deleted and replaced with the phrase "Deleted in its entirety."

Subsection 2809 is amended to read "DEFERRED PAYMENT LOANS"

Paragraph 2809.1 is amended to read "The maximum deferred payment loan amount shall be the amount that the borrower cannot afford to borrow and repay as an amortizing loan, as determined by DHCD based on the underwriting standards set forth in § 2805. The total principal of any deferred and amortizing loans shall not exceed the loan principal limits established in § 2807."

Paragraph 2809.1(a) is deleted.

Paragraph 2809.1(b) is deleted.

Paragraph 2809.2 is deleted.

Paragraph 2809.3 is amended by striking the word "direct".

Paragraph 2809.4 is amended by striking the word "direct".

Paragraph 2809.5 is amended by striking the word "direct".

Paragraph 2809.6 is amended by striking the word "direct".

Subsection 2810 is deleted and replaced with the phrase "Deleted in its entirety."

Paragraph 2811.1 is amended to read "Each owner of a property containing rental units in addition to the owner-occupied unit who receives assistance for repairs benefiting those rental units shall be required to sign a rent regulatory agreement with the Department specifying affordability and relocation benefit requirements affecting those units. The rent regulatory agreement shall be on a form prescribed by the Department."

Paragraph 2811.1(a) is deleted.

Paragraph 2811.1(b) is deleted.

Paragraph 2811.2 is deleted and replaced with the phrase "Deleted in its entirety."

Subsection 2812 is amended to read "CONFLICT OF INTEREST OF PUBLIC BODY".

Subsection 2899.1 is amended by deleting the definitions of "low-moderate income" and "moderate income".

Any person desiring to comment on these proposed rules should submit comments in writing, not later than thirty (30) days from the date of publication of this notice in the D.C. Register, to Paul Cohn, Interim Program Manager, Single Family Residential Rehabilitation Program, Department of Housing and Community Development, 801 North Capitol Street, N.E., 6th Floor, Washington, DC 20002. Additional copies of these proposed rules may be obtained at that address.

**PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1333 H STREET, N.W., SUITE 200, WEST TOWER
WASHINGTON, DC 20005**

NOTICE OF PROPOSED RULEMAKING

**FORMAL CASE NO. 990, IN THE MATTER OF DEVELOPMENT OF LOCAL
EXCHANGE CARRIER QUALITY OF SERVICE STANDARDS FOR THE
DISTRICT**

The Public Service Commission of the District of Columbia ("DCPSC"), pursuant to its authority under D.C. Code, 2001 Ed. § § 34-802 hereby gives notice of its intent to adopt the following amendments to Chapters 25 and 27 of Title 15 DCMR. The amendments change rules for competitive local exchange carriers that choose to exit the telecommunications market in whole or in part. The Commission gives notice of its intent to take final rulemaking action not less than thirty (30) days after publication of this notice in the *D.C. Register*.

2512 Assignment or Transfer of Certification to Provide Local Exchange Service

- 2512.1 The certification to provide local exchange service within the District of Columbia granted to an applicant shall not be assignable or transferable, except in circumstances in which the assignor or transferor and assignee and transferee share the same or substantially similar corporate structures, affiliates, or financial, managerial, administrative, or technical personnel, equipment, and other resources. No certificated provider shall assign or transfer the certification to another party, without written approval of the Commission.
- 2512.2 At least sixty days prior to the date of a proposed assignment or transfer, a certificated provider shall notify all affected customers of the proposed transfer or assignment by separate direct mailing or by bill insert. The notice shall describe any and all changes in terms, conditions, rates, and charges that will affect customers if the transfer or assignment is approved by the Commission, and shall advise the customer of the right to terminate service prior to the effective date of the assignment or transfer.
- 2512.3 A request to transfer or assign a certification to provide local exchange service within the District shall be made by a joint application of the assignor and assignee or transferor and transferee.
- 2512.43 The joint applicants shall file with the Office of the Commission Secretary an original and fifteen (15) copies of the joint application not less than thirty days prior to the proposed effective date of the assignment or transfer.

2512.5 The joint application shall include, at a minimum, the following information, in the following order and specifically identified, either in the joint application or in attached exhibits.

- (a) For each joint applicant, the complete name, address, telephone number, fax number, registered agent, corporate contact, and the name of the person authorized to respond to Commission inquiries on behalf of the joint applicant;
- (b) The name under which local exchange services are currently provided by the assignor or transferor in the District;
- (c) The name under which local exchange services will be provided if the assignment or transfer is approved;
- (d) A description of the facilities currently owned or operated in the District by each applicant, if any;
- (e) A description of the services currently provided by each applicant in the District;
- (f) A description of the transaction that will result in the transfer or assignment of the certification to provide local exchange service within the District;
- (g) A detailed plan for the transfer of customers to the transferee or assignee;
- (h) A demonstration that the assignor or transferor and the assignee or transferee share the same or substantially similar corporate structures, affiliates, or financial, managerial, administrative, or technical personnel, equipment, and other resources;
- (i) A statement that all District of Columbia customers purchasing local exchange service from the assignor or transferor were notified of the provider's intent to transfer or assign its certification at least sixty days before the proposed effective date of the assignment or transfer;
- (j) A statement that the applicants understand that the filing of a joint application does not, by itself, constitute authorization to assign or transfer the certification; and
- (k) An affidavit signed by a person with authority to bind each of the joint applicants, affirmatively declaring that the authority to

execute the affidavit has been properly granted, that the contents of the joint application are true, accurate and correct, and that the joint applicants understand that if the contents of the joint application are found to be false or to contain misrepresentations, any authority granted may be suspended or revoked upon Commission Order.

- 2512.6 Upon a determination that the joint application complies with the standards in 2512.1 and that the assignor or transferor and assignee or transferee have complied with the other provisions of Section 2512, and all other applicable Commission rules and requirements of applicable law, the Commission shall issue an Order transferring or assigning the automatic certification or certification by waiver to provide local exchange service to the transferee or assignee. The certification shall specify whether the assignee or transferee is authorized to provide facilities-based services, resold services, or both.

CHAPTER 27 REGULATION OF CERTIFIED TELECOMMUNICATIONS SERVICE PROVIDERS

2700 PURPOSE AND APPLICABILITY

Pursuant to D.C. Code § 43-1451 *et seq.*, this Chapter shall establish rules governing the provision of telecommunications services in the District. This Chapter shall apply to all telecommunications service providers certificated as CLECs within the District.

2701 ASSESSMENT OF COSTS

- 2701.1 All local exchange carriers shall be subject to an annual assessment in an amount determined by D.C. Code § 43-612(b). The annual assessment shall be determined on a nondiscriminatory basis.

2702 TARIFFS

- 2702.1 Prior to commencing service, all CLECs shall file tariffs with the Commission for each service offered within the District. The tariffs shall describe the service being offered, all terms and conditions, and the rate or rates charged for the service pursuant to D.C. Code § 43-1452(f). Tariffs shall be maintained and updated as necessary.
- 2702.2 Tariffs filed by CLECs relating to tolls, charges, rate structure, terms and conditions of service, rate base, rate of return, operating margin, earnings, or cost of service shall be reviewed pursuant to 15 DCMR § 3501.12.

2702.3 When a CLEC amends or rescinds a tariff's service(s), terms and conditions, and/or rate or rates, the CLEC shall file an amended tariff with the Commission. The amended tariff shall be reviewed pursuant to 15 DCMR § 3501.12.

2702.4 When a CLEC amends a tariff that involves a change in conditions or services, the CLEC shall send a notice to all affected customers no later than the next billing period following the tariff amendment filing date. The amended tariff filed with the Commission shall include a statement certifying that this notice was or will be sent by the end of the next billing period following the tariff amendment filing date, identifying the date(s) the notice was or will be sent.

2703 ENFORCEMENT OF COMMISSION RULES

2703.1 Failure of any CLEC to comply with any provision of the Commission's rules or orders may result in the suspension or revocation of the CLEC's certification, or other penalties as the Commission may direct.

2704 ABANDONMENT OF CERTIFICATION

2704.1 Any CLEC certificated by the Commission that proposes to abandon the CLEC certification in the District shall file an abandonment of certification application with the Commission not later than thirty (30) days prior to the proposed date of the abandonment of certification. The application shall contain, in the following order and specifically identified, the following information:

(a) The applicant's name, address, telephone number, fax number, the name under which the applicant is providing service in the District, the date and order number of the Commission order that authorized the applicant to provide telecommunications services in the District, and the proposed abandonment date;

(b) A complete explanation of the reasons for the proposed abandonment of certification;

(c) A description of the arrangements made for payment of any outstanding taxes, fees, or other amounts owed to the Commission or any other agency of the District of Columbia;

(d) A plan for the applicant to remove, maintain, or transfer any facilities in the District that would otherwise be abandoned; and

(e) An affidavit verifying that all of the information in the application is true and correct.

- 2704.2 If, at the time of the filing of the abandonment of certification application, the CLEC is providing service to customers, the applicant also shall file an abandonment of service application pursuant to 15 DCMR § 2705.
- 2704.3 The CLEC shall serve a copy of its abandonment of certification application on the Office of the People's Counsel on the same day that the application is filed with the Commission.
- 2704.4 The applicant shall return any customer deposits and satisfy in full any outstanding taxes, fees, or debts owed to the Commission or other District agencies within fifteen (15) days of the abandonment of certification application filing date. Upon full payment of these debts and/or fees, the applicant shall notify the Commission that all debts and/or fees have been paid by filing an affidavit explaining how and when these payments were made.
- 2704.5 Within thirty (30) days after receiving the abandonment of certification application, the Commission shall either approve the application, reject the application, or request supplemental information. If the Commission requests supplemental information, the applicant will be afforded fifteen (15) days to provide the Commission with such supplemental information.
- 2704.6 The Commission shall approve an abandonment of certification application if:
- (a) The CLEC has developed and implemented a comprehensive plan for returning customer deposits and satisfying outstanding debts owed the Commission or other District agencies operating in the District, if any; and
 - (b) Approving the abandonment of certification application would serve the public interest.
- 2704.7 No CLEC shall abandon its certification absent Commission approval. Upon receiving Commission approval, the applicant shall void any existing interconnection agreements by notifying the Commission and any telecommunications service provider with which the applicant has signed an interconnection agreement of the abandonment of certification.

2705 ABANDONMENT OF SERVICE

- 2705.1 Any CLEC certificated by the Commission that proposes to abandon the provisioning of telecommunications services in the District shall file an application with the Commission not later than ninety thirty (30) (90) days prior to the proposed date of abandonment of service. This Section 2705 shall apply if a CLEC proposes to abandon the provisioning of

telecommunications services in the District, either in whole or in part (including, but not limited to, for a class of customers {such as residence customers or business customers}, or, customers located in specified geographic areas). However, this Section 2705 does not apply where a CLEC in the ordinary course of business is proposing only to (a) terminate service to an individual customer for reasons uniquely applicable to that customer (for instance, because the customer has failed to pay charges due to the CLEC), (b) withdraw a feature of a service (for instance, caller ID or call waiting), (c) limit availability of a service so that the service is available only to the CLEC's customers who already subscribe to that service, or (d) change a rate, term or condition for a service. The application shall contain, in the following order and specifically identified, the following information:

(a) The applicant's name, address, telephone number, fax number, the name under which the applicant is providing service in the District, the date and order number of the Commission order that authorized the applicant to provide telecommunications services in the District, and the proposed abandonment of service date;

(b) A complete explanation of the reasons for the proposed abandonment of service, including, but not limited to, a statement as to whether the applicant proposes to abandon the provisioning of telecommunications services in the District in whole, or only in part, and if only in part, a description of the proposed abandonment (for instance, for a class of customers {such as residence customers or business customers}, or, customers located in specified geographic areas);

(c) A plan for the refund of any deposits collected from affected customers, with accrued interest (less any amounts due to the applicant);

(d) If the applicant proposes to abandon the provisioning of telecommunications services in the District in whole, Aa description of the arrangements made for payment of any outstanding taxes, fees, or other amounts owed to the Commission or any other agency of the District of Columbia;

(e) A plan for the applicant to remove, maintain, or transfer any facilities in the District that would otherwise be abandoned;

(f) A statement of the number of customers, classified by residential or business customer, affected by the proposed abandonment of service;

(g) A statement of the number of customers affected by the proposed abandonment of service for whom the applicant receives universal service support;

(h) A statement ~~of verifying the date on which notice of the proposed abandonment of service was or will be sent to affected customers and the method by which customers were notified;~~

(i) A copy of the notice ~~or a statement describing the notice that was or will be sent to affected customers; and~~

(j) An affidavit verifying that all of the information in the application is true and correct.

2705.2 The applicant shall serve a copy of its abandonment of service application on the Office of the People's Counsel on the same day that the application is filed with the Commission.

2705.3 Any CLEC that proposes to abandon service in the District shall, ~~not later than thirty (30) days before the proposed abandonment, shall notify each customer affected by the proposed abandonment in accordance with the customer notice provisions of Section 2706.5, by letter. Notice to customers shall be given in accordance with the customer notice provisions of Section 2706.5 even if the proposed abandonment of service is not otherwise subject to compliance with Section 2706. The notice shall contain the following information written in plain language:~~

(a) ~~The applicant's name, address, telephone number, fax number, the name under which the applicant is providing service in the District, the date and order number of the Commission order that authorized the applicant to provide telecommunications services in the District, and the proposed abandonment date;~~

(b) ~~An explanation of the reasons for the proposed abandonment of service;~~

(c) ~~A plan for the refund of any deposits collected from affected customers;~~

(d) ~~A plan for the transfer, removal, or abandonment of any carrier-owned equipment or facilities located on the customer's premises; and~~

(e) ~~A statement informing the customer of the following information and procedures:~~

(i) ~~The Commission's and the Office of the People's Counsel's name, address, telephone number, fax number, and web site;~~

~~(ii) That the customer may obtain a copy of the Commission's rules relating to CLEC certification and regulation from the Commission;~~

~~(iii) That contact information for other CLECs operating in the District is available from the Commission; and~~

~~(iv) That any switchover fees incurred by the customer to migrate the customer's service account to another telecommunications service provider be satisfied by the applicant.~~

2705.4

The applicant shall return all customer deposits affected by the proposed abandonment of service, with accrued interest (less any amounts due to the applicant), and if the applicant proposes to abandon its provisioning of telecommunications services in the District in whole, satisfy its outstanding debts owed to the Commission or other District agencies within ~~seventy-five (75) fifteen (15)~~ days of the abandonment of certification application filing date. The applicant also shall pay any cost directly associated with the transfer of its customers to the incumbent local exchange carrier or another CLEC and otherwise chargeable to the customers, as long as the transfer occurs within thirty (30) days of the notification of the applicant's abandonment of service. Upon full payment of these fees, the applicant shall notify the Commission that all such fees have been paid.

2705.5

The applicant shall reimburse its customers affected by the proposed abandonment of service for any carrier charges (including, but not limited to, service order charges and service installation charges) directly associated with the transfer of those customers to the incumbent local exchange carrier or another CLEC and otherwise chargeable to the customers, as long as the transfer occurs within thirty (30) days of the notification to the customer of the applicant's abandonment of service. Except where the customer is transferred to an Acquiring Carrier (as defined in Section 2706.2) or to an "acquiring carrier" (as such term is used in 47 CFR § 64.1120), the amount of the carrier charges that an applicant shall be required by this Section 2705.5 to reimburse to a customer shall not exceed: (a) \$50 per residence service line; and, (b) \$100 per business service line. The Commission may by order annually increase the maximum amount of the carrier charges to be reimbursed by the applicant under this Section 2705.5 by a percentage amount equal to the percentage increase in the Consumer Price Index - All Urban Consumers applicable to the District of Columbia as determined by the United States Government. Upon full payment of these amounts, the applicant shall notify the Commission that all such amounts have been paid.

2705.65 — Within ~~ninety thirty~~ (90/30) days after receiving the abandonment application, the Commission shall either approve the application, reject the application, or request supplemental information. If within ninety (90) days after receiving the abandonment application, the Commission does not either approve the application, reject the application, or request supplemental information, the application shall be deemed to have been approved. If the Commission requests supplemental information, the applicant has fifteen (15) days to provide the Commission with such supplemental information. If the Commission requests supplemental information and by the later of thirty (30) days after receiving the supplemental information or ninety (90) days after receiving the abandonment application the Commission does not either approve the application, reject the application, or request additional supplemental information, the application shall be deemed to have been approved.

2705.7 — Approval of the abandonment of service application shall be subject to compliance with the applicable provisions of Section 2706 and the applicant shall comply with the applicable provisions of Section 2706.

2705.86 — The Commission shall approve an abandonment of service application if:

(a) ~~The applicant has provided sufficient and timely notice to its customers of the proposed abandonment; The applicant has complied with this~~ Section 2705, the applicable provisions of Section 2706, and all other applicable Commission rules and requirements of applicable law;

(b) The applicant has developed and implemented a comprehensive plan for returning customer deposits for customers affected by the proposed abandonment of service, with accrued interest (less any amounts due to the applicant); and, if the applicant proposes to abandon its provisioning of telecommunication services in the District in whole, and satisfying outstanding debts and/or owed the Commission and other District agencies;

(c) The applicant has satisfied all switchover fees incurred by its customers affected by the proposed abandonment of service as required by Section 2705.5; and

(d) Approving the abandonment of service application would serve the public interest.

2705.97 — No CLEC shall abandon service in the District without Commission approval. Upon receiving Commission approval, the applicant shall void any existing interconnection agreements by informing the Commission

and any telecommunications service provider with which the applicant has signed an interconnection agreement of the abandonment of service.

2706. ABANDONMENT OF SERVICE TO THE LOCAL EXCHANGE VOICE SERVICES MARKET

2706.1 Applicability

This section applies when a CLEC that has one or more customers proposes to abandon the provisioning of telecommunications services to the local exchange voice services market, or a portion of the local exchange voice services market (including, but not limited to, a class of customers {such as residence customers or business customers}, or, customers located in specified geographic areas). However, this section does not apply where a CLEC in the ordinary course of business is proposing only to (a) terminate service to an individual customer for reasons uniquely applicable to that customer (for instance, because the customer has failed to pay charges due to the CLEC), (b) withdraw a feature of a service (for instance, caller ID or call waiting), (c) limit availability of a service so that the service is available only to the CLEC's customers who already subscribe to that service, or (d) change a rate, term or condition for a service.

2706.2 Definitions

For the purposes of this section:

- (a) "Acquiring Carrier" means a local exchange carrier that has entered into an arrangement with an Exiting CLEC to acquire the Exiting CLEC's customers.
- (b) "Cut-Off Date" means the date after which an Exiting CLEC's customers will have to wait until their migration to the Acquiring Carrier is completed before they can obtain local exchange service from a different carrier.
- (c) "Exiting CLEC" means a CLEC that proposes to abandon the provisioning of telecommunications services to the local exchange voice services market, or a portion of the local exchange voice services market (including, but not limited to, a class of customers {such as residence customers or business customers}, or, customers located in specified geographic areas).
- (d) "Network Service Provider" means a local exchange carrier that provides interconnection, network elements, telecommunications services, collocation, or other services, facilities, equipment or

arrangements, that (1) are used by the Exiting CLEC to provide service to its customers, or (2) will be used by a carrier (including, but not limited to, an Acquiring Carrier) that is acquiring one or more of the Exiting CLEC's customers, to provide service to those customers.

- (e) "Priority/Essential Customers" means any ambulance, police or fire service, hospital, national security agency, or civil defense organization, or any customer who has obtained Telecommunications Service Priority ("TSP") authorization from the Federal Government.

2706.3 Exit Plan

- (a) An Exiting CLEC must file an Exit Plan with the Commission at least 90 days in advance of the Exiting CLEC's proposed discontinuance of service date. Upon good cause shown, the Commission may establish an alternative date by which the Exiting CLEC must file its Exit Plan.
- (b) The Exit Plan filed by the Exiting CLEC with the Commission must include:
1. A statement specifying the Exiting CLEC's proposed discontinuance of service date and, if there is an Acquiring Carrier, the proposed Cut-Off Date.
 2. A sample of the initial notice letter that will be sent to the Exiting CLEC's customers pursuant to Section 2706.5.
 3. Plans for follow-up customer notification arrangements, such as a second letter, phone calls or bill inserts.
 4. A date by which the Exiting CLEC's customers must select a new local exchange carrier.
 5. Contact names and telephone numbers for the Exiting CLEC's cutover coordinator, regulatory contact and other pertinent contact personnel (such as customer service record ("CSR") and provisioning contacts).
 6. Any arrangements made for an Acquiring Carrier.
 7. Steps to be taken with the number code and/or pooling administrator to transfer NXX and thousand number blocks while preserving number portability for numbers within the code.
 8. The current customer serving arrangements (e.g., UNE-Platform, UNE-Loop, resale or full facilities) and the underlying Network Service Providers.
 9. To the extent feasible, a statement as to the following: (a) whether there are any customers for whom the Exiting CLEC is the only provider of facilities; (b) the number of customers for whom the Exiting CLEC is the only provider of facilities; and,

- (c) the number of lines for which the Exiting CLEC is the only provider of facilities.
10. The number of customers impacted.
11. A statement setting out (a) the format in which the Exiting CLEC's customer service records ("CSRs") are being kept, (b) what data elements are in these CSRs, and (c) how the CSRs can be obtained by other carriers.

Data elements are:

- A. Billing telephone number
- B. Working telephone number
- C. Complete customer billing name and address
- D. Directory listing information, including name, address, telephone number and listing type
- E. Complete service address
- F. Current Primary Interexchange Carrier selection (inter/intraLATA toll service), including freeze status
- G. Local service freeze status
- H. All vertical features – (e.g., custom calling, hunting)
- I. Options – (e.g., Lifeline, 900 blocking, toll blocking, remote call forwarding, off premises extensions)
- J. Tracking number or transaction number (e.g., purchase order number)
- K. Circuit identification information (with associated telephone number)
- L. Service configuration information (e.g., UNE-Platform, UNE-Loop, resale or full facilities)
- M. Identification of the Network Service Provider(s)
- N. Identification of any line sharing/line splitting on the migrating customer's line
12. Any transfer of assets or control that requires Commission approval
13. Plans to modify and/or cancel tariff(s)
14. Plans for reimbursement of switchover fees
15. Plans for treatment of customer deposits, credits, and/or termination liabilities or penalties
16. Plans for the transfer, removal or abandonment of any Exiting CLEC equipment or facilities on the customers' premises
17. A statement on whether the Acquiring Carrier will be responsible for handling any complaints filed, or otherwise raised, against the Exiting CLEC prior to or during the migration of customers to the Acquiring Carrier
18. Plans for unlocking the E-911 database, including the letter detailed in Section 2706.8.

- (c) If the Exit Plan contains information that the Exiting CLEC claims is confidential or proprietary, the Exiting CLEC may seek confidential treatment of the confidential or proprietary information in accordance with 15 DCMR § 150. To the extent provided by 15 DCMR § 150 and other provisions of applicable law, copies of the confidential version of the Exit Plan shall be available to the Office of the People's Counsel, carriers, and other interested persons.
- (d) If the Exiting CLEC seeks confidential treatment of information contained in the Exit Plan, the Exiting CLEC shall also file with the Commission a version of the Exit Plan that omits the confidential information. The Exiting CLEC shall serve the non-confidential version of the Exit Plan upon the Office of the People's Counsel. The non-confidential version of the Exit Plan shall be available from the Commission to carriers and other interested persons.
- (e) Within fifteen (15) days after receiving the Exit Plan, the Commission shall either approve the Exit Plan, reject the Exit Plan, or request supplemental information. If within fifteen (15) days after receiving the Exit Plan, the Commission does not either approve the Exit Plan, reject the Exit Plan, or request supplemental information, the Exit Plan shall be deemed to have been approved. If the Commission requests supplemental information, the Exiting CLEC has fifteen (15) days to provide the Commission with such supplemental information. If within fifteen (15) days after receiving the supplemental information, the Commission does not either approve the Exit Plan, reject the Exit Plan, or request additional supplemental information, the Exit Plan shall be deemed to have been approved.

2706.4 Industry Notification

- (a) When the Commission receives notice of the Exiting CLEC's proposed discontinuance of service, the Commission Secretary shall post notice of the proposed discontinuance of service on the Commission web site under "Report of Telephone Companies Exiting the Local Exchange Market" at: www.dcpsc.org.
- (b) When the Commission receives notice of the Exiting CLEC's proposed discontinuance of service, the Commission Secretary shall send notice of the proposed discontinuance of service to a carrier contact list. This list shall be located on the Commission website and shall include carriers that have asked to be included on the list. Each carrier on the list shall be responsible for maintaining the accuracy of its information on the list.

- (c) Within five (5) days after the Exiting CLEC files its Exit Plan with the Commission:
 - (i) the Exiting CLEC shall give notice to its Network Service Providers of its proposed discontinuance of service; and
 - (ii) the Acquiring Carrier shall give notice to its Network Service Providers of its proposed acquisition of the Exiting CLEC's customers.
- (d) If necessary, a conference call may be established by the Commission Staff in order to address potential problem areas and procedures. The persons invited to participate in the conference call shall include all carriers providing service in the District of Columbia, the Exiting CLEC's Network Service Providers, the Acquiring Carrier's Network Service Providers, the Commission Staff, the Office of the People's Counsel, and such other persons as the Commission Staff deems appropriate.

2706.5 Customer Notification

- (a) If there is an Acquiring Carrier, the Exiting CLEC and the Acquiring Carrier must give written notice to the Exiting CLEC's customers of the Exiting CLEC's proposed discontinuance of service and the proposed transfer of the customers to the Acquiring Carrier.
- (b) If there is not an Acquiring Carrier, the Exiting CLEC must give written notice to its customers of its proposed discontinuance of service.
- (c) The customer notice to be provided pursuant to Section 2706.5(a) or (b) must be given at least 60 days in advance of the Exiting CLEC's proposed discontinuance of service date. Upon good cause shown, the Commission may establish an alternative customer notice period; provided that, the customer notice must be given at least 45 days in advance of the Exiting CLEC's proposed discontinuance of service date.
- (d) The notice letter must comply with Commission and FCC requirements.
- (e) Contents
 - 1. The Commission shall adopt by order model customer notification letters that comply with Commission and FCC regulations. A customer notice letter issued pursuant to Section 2706.5(a) or (b) must comply with the Commission's applicable model customer notification letter.

2. The customer notification letter must include the following information:

- A. A statement that the Exiting CLEC will no longer be providing the customer's local telephone service.
- B. If there is an Acquiring Carrier, the identity of the Acquiring Carrier.
- C. The customer's right to choose an alternative carrier.
- D. Clear instructions to the customer regarding the choice of an alternative carrier.
- E. The customer's need to take prompt action when there is no Acquiring Carrier.
- F. Time deadlines for customer action in accordance with the Commission's rules.
- G. A statement regarding switchover fees and the Exiting CLEC's plans for reimbursement of switchover fees.
- H. The customer's responsibility for payment of telephone bills during the migration period.
- I. When the customer is being transferred to an Acquiring Carrier, information about the lifting and reestablishment of preferred carrier freezes.
- J. Applicable information about long distance service and whether it may be impacted by the change in local exchange carrier.
- K. The Exiting CLEC's plans for treatment of customer deposits, credits, and/or termination liabilities or penalties.
- L. The Exiting CLEC's plans for transfer, removal or abandonment of any Exiting CLEC equipment or facilities on the customer's premises.
- M. Information on the Acquiring Carrier's services and rates, terms and conditions, and on the means by which the Acquiring Carrier will notify the customer of any changes to these rates, terms and conditions.
- N. Whether the Acquiring Carrier will be responsible for handling any complaints filed, or otherwise raised, against the Exiting CLEC prior to or during the migration of customers to the Acquiring Carrier.
- O. Any other information required by applicable law (including, but not limited to, any other information required by the Commission or the FCC).
- P. Toll-free telephone numbers for the Exiting CLEC and the Acquiring Carrier.
- Q. Contact information for the Commission.
- R. Contact information for the Office of the People's Counsel.

3. If there is an Acquiring Carrier, the customer notice letter must contain a Cut-Off Date and a statement that customers who have not selected an alternative carrier by the Cut-Off Date will be transferred to the Acquiring Carrier. When notice is given to the customer 60 days in advance of the proposed discontinuance of service date, the Cut-Off Date shall be 30 days before the proposed discontinuance of service date. When notice is given to the customer less than 60 days in advance of the proposed discontinuance of service date, the Cut-Off Date shall be as specified by the Commission. The notification process must allow the customer 30 days to select a new carrier. The Acquiring Carrier may not migrate the Exiting CLEC's customers to the Acquiring Carrier until after the Cut-Off Date.
4. If there is not an Acquiring Carrier, the Exiting CLEC must give at least one additional notice to each customer who, 20 days prior to the proposed discontinuance of service date, has not migrated to a new carrier. This additional notice must be given no later than 15 days prior to the proposed discontinuance of service date or, upon a showing to the Commission that 15 days advance notice is not feasible, at the earliest possible date, as approved by the Commission. The form of the additional notice could include: a follow-up letter, a telephone call to the customer, a bill insert, or any other means of direct contact with the customer.

2706.6 Mass Migration Process

- (a) As soon as is feasible after the Exiting CLEC's Exit Plan is filed with the Commission, the Exiting CLEC and the Acquiring Carrier shall establish with their applicable Network Service Providers appropriate arrangements for migration of the Exiting CLEC's customers to the Acquiring Carrier. The Exiting CLEC and the Acquiring Carrier shall submit to their applicable Network Service Providers any service orders and information needed to carry out the migration. Such service orders and information shall be submitted sufficiently in advance of the Exiting CLEC's proposed discontinuance of service date that the migration will be able to be completed by the proposed discontinuance of service date.
- (b) Carriers other than the Acquiring Carrier who are acquiring the Exiting CLEC's customers shall submit to their applicable Network Service Providers any service orders and information needed to carry out the migration. To the extent feasible, such service orders and information shall be submitted sufficiently in advance of the Exiting CLEC's proposed discontinuance of service date that the migration will be able to be completed

by the proposed discontinuance of service date.

(c) Customer Lists

1. At least 60 days prior to the proposed discontinuance of service date, the Exiting CLEC must submit a list of its customers to the Commission Staff.
2. The Exiting CLEC's submission of customer lists and Staff use or disclosure of customer list information will be subject to applicable laws and regulations (including, but not limited to, to the extent applicable, 15 DCMR § 150) relating to use and disclosure of customer information, disclosure of records, confidential trade secret status, and privacy protections.
3. The customer list shall include: customer name, billing address, service address, and telephone number(s), class of service, and type of serving arrangement (e.g., UNE-Platform, UNE-Loop, resale or full facilities). To the extent feasible, customer lists shall also include an identification of Priority/Essential Customers. Also, to the extent feasible, customer lists shall identify any customers for whom the Exiting CLEC is the only provider of facilities and any customers whose particular serving arrangements may create migration problems.
4. The Exiting CLEC shall make available to its Network Service Provider, its customers' new carriers and these carriers' Network Service Providers, the CSR information needed to migrate the Exiting CLEC's customers, and any other information reasonably needed to migrate the Exiting CLEC's customers. Upon request, the Exiting CLEC shall also provide to Staff CSR information for customers whose particular serving arrangements may create migration problems.

(d) Progress Reports

The Exiting CLEC must track the progress of the migration of its customers and provide the Commission with progress reports. The reports shall contain a count of the customers that remain in service with the Exiting CLEC and such other information as shall be specified by the Commission. The reports shall be provided at such intervals as shall be specified by the Commission. Subject to 15 DCMR § 150 and other provisions of applicable law, upon request by the Office of the People's Counsel, the Exiting CLEC shall provide copies of the progress reports to the Office of the People's Counsel.

(e) Discontinuance of Service

Except as authorized by the Commission pursuant to Section 2706.3(e) or

as otherwise authorized by the Commission, the Exiting CLEC shall not discontinue provision of service until all of its customers who will be affected by its discontinuance of service have migrated to other carriers.

2706.7 NXX Code Transfers

If the Exiting CLEC has any NXX codes or thousand number blocks assigned, it must make transfer arrangements with the code administrator at least 66 days prior to the proposed discontinuance of service date (or by such earlier date as shall be specified by the code administrator).

2706.8 E- 911

- (a) The Exiting CLEC must unlock all of its telephone numbers in the E-911 database in accordance with the National Emergency Numbering Association's (NENA) standards.
- (b) The Exiting CLEC must submit a letter to the appropriate E-911 service provider authorizing the E-911 service provider to unlock any remaining E-911 records after the Exiting CLEC has discontinued provision of service. This letter must be provided at least 30 days prior to the Exiting CLEC's discontinuance of service.

2706.9. Freezes

All customers who have preferred carrier freezes on the services affected by a migration to an Acquiring Carrier will be transferred to the Acquiring Carrier, unless they have selected a different carrier by the Cut-Off Date. The Exiting CLEC shall lift existing preferred carrier freezes on services involved in a migration to an Acquiring Carrier. An Acquiring Carrier shall advise the customers that it is acquiring from the Exiting CLEC that if they want preferred carrier freezes, they must contact the Acquiring Carrier to arrange for such freezes.

2706.10 Reservation of Rights.

Nothing in this Section 2706 shall limit, or delay the right to exercise, any right that an incumbent local exchange carrier, CLEC, or other person, may have under an interconnection or resale agreement, a tariff, or otherwise, to require payment for, to decline to provide, or to suspend or terminate, interconnection, network elements, telecommunications services, collocation, or other services, facilities, equipment or arrangements.

27076 REPORTS

27067.1 All certificated telecommunications service providers in the District shall be required to file an annual report with the Commission on the Commission's annual report form by April 15, including the following:

(a) Type of services being provided to customers in the District as of the previous year ending December 31;

(b) Number of lines and customers, classified by residential category (single family, multi-family complex) and commercial category (business, government);

(c) Jurisdictional revenue for the previous year ending December 31;

(d) Name, address, telephone number, fax number, and e-mail address, if available, of the regulatory and customer service contacts;

(e) The means by which the CLEC is providing service (resale through the incumbent local exchange carrier, resale through another provider, facilities-based (including lease of unbundled network elements), resale and facilities-based, or other); and

(f) Such other information as the Commission may require.

27076.2 A CLEC requesting that its report, or any portion thereof, be treated as confidential shall follow the procedures outlined in 15 DCMR § 150 regarding confidential and proprietary information.

2798 WAIVER

The Commission may, for good cause, waive any rule under Chapter 27 unless the rule contains a provision that is expressly required by statute.

2799 DEFINITIONS

"Abandonment of Certification Application" means an application to abandon the certification to operate as a CLEC in the District of Columbia.

"Abandonment of Service Application" means an application to abandon ~~offering all types of telecommunications services provisioning of telecommunications services~~ in the District, either in whole or in part (including, but not limited to, for a class of customers {such as residence customers or business customers}, or, customers located in specified geographic areas).

"Applicant" means a CLEC filing an abandonment of certification or an abandonment of

service application.

"Commission" means the Public Service Commission of the District of Columbia.

"Competitive Local Exchange Carrier (CLEC)" means any provider of telecommunications service that was not an incumbent local exchange carrier on January 31, 1996 and has been granted certification to provide telecommunications services in the District of Columbia.

"Days" means calendar days, unless otherwise provided.

"Incumbent local exchange carrier" means, with respect to an area, the local exchange carrier or its successor(s) that provided local exchange service in such an area on the date of enactment of the federal Telecommunications Act of 1996 (P.L. 104-104).

"Local Exchange Service" means a telecommunications service provided within an exchange area.

"Local Exchange Carrier" means a provider of local exchange service within an exchange area.

"Tariff" means a written schedule that describes the service being offered, lists all terms and conditions, and specifies the rate or rates charged for the service.

"Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

"Telecommunications industry" means communications businesses using regulated or unregulated facilities or services and includes broadcasting, telecommunications, cable, computer data transmission, software, programming, advanced messaging and electronics.

"Telecommunications service" means the offering of telecommunications for a fee directly to the public or to such classes of users as to be effectively available to the public, regardless of the facilities used.

"Telecommunications service provider" means an entity that provides telecommunications services.

All persons interested in commenting on the subject matter of this proposed rulemaking action may submit written comments and reply comments not later than thirty (30) and forty-five (45) days, respectively, after publication of this notice in the *D.C. Register* with Sanford M. Speight, Acting Commission Secretary, Public Service Commission of the District of Columbia, 1333 H Street, N.W., West Tower, Suite 200, Washington, DC 20005. Copies of these proposed rules may be obtained, at cost, by writing the Commission Secretary at the above address.